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Washington, D.C. 20530

May 22, 1991

Stephen Field
Assistant Regional Counsel
Environmental Protection Agency,
Region III (3RC10)
841 Chestnut Street
Philadelphia, Pennsylvania 19107

Re: Rogers Electric Administrative Order

Dear Mr. Field,

The following are certain comments presented by the Defense Logistics Agency regarding the draft Administrative Order previously forwarded by Terry Stillman. Reference may be made to the comments of Blake Construction contained in their letter of May 6, 1991.

1. Section 1.4: DLA joins in the request of Blake Construction for the addition of the identified second sentence to this section.
2. Section 3.6: insert certain but not all of the before "PCB transformers...". The obvious intent of this addition is to clarify the position of the DLA that it does not believe it was the previous owner of all transformers or welders on site. ✓
3. Various Sections: DLA joins in the concerns expressed by Blake regarding the timing of certain deadlines and generally agrees with the proposals made by Blake. Although, this issue will be addressed in the work plan, DLA suggests that the deadline for disposal of the transformers, welders and drums be specifically set at not less than 45 days from the date of receipt from E.P.A of written approval of the work plan. TW
4. Section XII: Attached is language which should be inserted to define the dispute resolution process which will control any such dispute between DLA and EPA.

XII. DISPUTE RESOLUTION

Section 12.1: Except as specifically set forth elsewhere in this Order, if a dispute arises under this Order, the procedures of this Section shall apply. If DLA objects to any EPA notice of disapproval or requirement made pursuant to this Order, DLA shall

notify EPA's Project Manager in writing of its objections within seven (7) days of receipt of the disapproval notice or requirement. DLA's written objections shall define the dispute, state the basis of DLA's objections, and be sent via certified mail, return receipt requested. EPA and DLA then have an additional seven (7) days to reach agreement. If an agreement is not reached within seven (7) days, DLA may request a determination by EPA's Deputy Director for Superfund, Region 9. The Deputy Director's determination shall set forth EPA's decision regarding the disputed issue. DLA shall proceed in accordance with EPA's final decision regarding the issue in dispute, regardless of whether DLA agrees with the decision. If DLA does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from DLA, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

Section 17.2: The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Order. All elements of the work required by this Order shall continue and be completed in accordance with the applicable deadline.

Section 17.3: When dispute resolution is in progress, work affected by the dispute will continue unless the Deputy Director for Superfund, Region 3 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process.

Section 17.4: The invocation of dispute resolution does not stay stipulated penalties under this Order.

Section 17.5: Disputes Concerning the Imposition of Stipulated Penalties or the Final Deadline for Work under Section VII:

A. If a dispute concerns the imposition of stipulated penalties or the final deadline for completion of work at the Sites as requested under Section VII of this Order, and no agreement has been reached through informal dispute resolution, the written statement of dispute shall be forwarded to the Dispute Resolution Committee (DRC). The EPA representative on the DRC is the Director, Hazardous Waste Management Division, Region 3. The DLA representative on the DRC is the Commander, DRMS. The DRC shall have seven (7) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable

to resolve the dispute within the seven (7) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC).

B. The SEC shall serve as the forum for resolution of disputes not resolved by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 3. The DLA representative on the SEC is the Staff Director, Directorate of Installation Services and Environmental Protection, DLA. The SEC shall have seven (7) days to unanimously resolve the dispute and issue a written decision. If the SEC is unable to resolve the dispute within the seven (7) day period, the Regional Administrator shall issue a written opinion on the dispute. DLA may, within seven (7) days of the Regional Administrator's issuance of a written opinion, issue a notice elevating the dispute to EPA's Assistant Administrator for Enforcement. In the event DLA does not elevate the dispute to the Assistant Administrator for Enforcement within the designated seven (7) day period, DLA shall be deemed to have agreed with the Regional Administrator's written opinion on the dispute.

C. Upon escalation of the dispute to the Assistant Administrator for Enforcement in accordance with the procedures above, the Assistant Administrator for Enforcement will review and resolve the dispute within fourteen (14) days. Upon request, and prior to the resolution of the dispute, the Assistant Administrator for Enforcement shall meet and confer with the DLA Director, or his designee, to discuss the dispute. The Assistant Administrator for Enforcement shall then provide DLA with a written final decision setting forth the resolution of the dispute.

Section 13.2: Stipulated Penalties involving the DLA should be limited to \$5,000.00 for the first week and \$10,000.00 for each subsequent week.

New Section: The following section should be added:

XIV. ANTI-DEFICIENCY ACT

Nothing in this order shall be construed or deemed to obligate funds not available in an appropriation or fund, or to imply that any funds obligated during one fiscal year will be available in a future fiscal year, or otherwise be construed to create an obligation of funds by the federal agency in violation of the Anti-Deficiency Act, 31 U.S.C. 1331.

These comments are intended to facilitate a speedy and efficient clean-up process. However, DLA's willingness to enter into any Administrative Order is dependent on reaching a satisfactory

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agreement with Blake Construction as well as formal approval of such an order through all proper channels. DLA stands willing to work through any questions or concerns regarding all outstanding comments at your convenience.

Sincerely,

Assistant Attorney General
Environment and Natural Resources
Division

By:



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